

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES EDWARD WALLACE,
Plaintiff,
v.
LEMOORE PD, et al.,
Defendants.

No. 1:21-cv-01275-DAD-EPG

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
CERTAIN CLAIMS AND DEFENDANT
LEMOORE PD

(Doc. No. 10)

Plaintiff James Edward Wallace is a pretrial detainee in local custody proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 11, 2021, the assigned magistrate judge screened plaintiff's first amended complaint ("FAC") and found that plaintiff has stated cognizable claims against defendant Acosta for use of excessive force in violation of the Eighth Amendment of the U.S. Constitution and for failure to provide objectively reasonable medical care in violation of the Fourth Amendment, but that plaintiff had failed to state any cognizable claims against defendant Lemoore Police Department. (Doc. No. 10 at 2, 8.) Rather than provide plaintiff an opportunity to file a further amended complaint, the magistrate judge issued findings and recommendations recommending that this case proceed only on plaintiff's claims for use of excessive force and medical-needs

1 against defendant Acosta and that all claims brought by plaintiff against defendant Lemoore
2 Police Department be dismissed without further leave to amend. (*Id.* at 8.) In so recommending,
3 the magistrate judge noted that “[t]he Court previously explained to Plaintiff the deficiencies in
4 his initial complaint, provided Plaintiff with relevant legal standards, and provided Plaintiff an
5 opportunity to amend his complaint,” and given that “[p]laintiff filed his first amended complaint
6 with the benefit of the information provided by the Court, it appears that further leave to amend
7 would be futile.” (*Id.*)

8 The pending findings and recommendations were served on plaintiff and contained notice
9 that any objections thereto were to be filed within twenty-one (21) days after service. (*Id.*) No
10 objections have been filed and the time in which to do so has now passed.

11 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
12 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
13 findings and recommendations are supported by the record and proper analysis.

14 Accordingly,

- 15 1. The findings and recommendations issued on November 11, 2021 (Doc. No. 10)
16 are adopted in full;
- 17 2. This action shall proceed only on plaintiff’s claims brought against defendant
18 Acosta for use of excessive force in violation of the Eighth Amendment and for
19 failure to provide objectively reasonable medical care in violation of the Fourth
20 Amendment;
- 21 3. All claims brought by plaintiff against defendant Lemoore Police Department are
22 dismissed due to plaintiff’s failure to state a claim upon which relief may be
23 granted;

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